

REMARKS

Claims 1-19 are pending in the present application. In the Office Action mailed August 24, 2005, the Examiner rejected Claims 1-2, 4, 6, 9, 11-14, 16, and 18-19 under 35 U.S.C. §102(b), rejected Claims 1-3, 5-8, 14-15 and 17 under 35 U.S.C. §103(a). Each rejection is discussed below.

I. Rejection of Claims 1-2, 4, 11-14, 16, and 18-19 Under 35 U.S.C. §102(b)

Claims 1-2, 4, 6, 9, 11-14, 16, and 18-19 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,203,345 (hereinafter, “the Kennedy patent”). In particular, the Examiner states, “Kennedy discloses in Fig. 1 a remote telemetry/system method comprising an implantable temperature sensing device (transmitter) implanted in vagina of a (dairy) cow (col. 3, line 27) to determine an estrus temperature of the cow, a signal receiver / receiving antenna and a digital computer, inherently, acting as a processor and a digital access device, each temperature device comprises an identification signal to indicate the cow identity and its temperature (col. 3, lines 8-10).” Office Action, page 2. Additionally, the Examiner states, “For claim 12 Kennedy states that the cows are being monitored continuously (over extended time) to determine the estrus, and thus, fluctuation (increase) from a normal, temperature, and the signals are received and decoded using programs (col. 6, lines 36-52), inherently, recognizing the estrus and, inherently, notifying the operator. It is also, inherent, that the temperature fluctuation/increase is compared with a normal cow temperature. The method steps will be met during the normal operation of the device stated above.” Office Action, page 2. The Applicants respectfully disagree.

A claim is not anticipated by a prior art reference when that reference fails to describe each and every element as set forth in the contested claim. *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed.Cir. 1987). The Examiner indicates that the animal identification device is inherent within a digital computer taught by the Kennedy patent: “Thus, it is inherent, that the computer comprises an animal identification device.” Office Action, page 2. The Examiner is respectfully directed to the Specification at page 10, lines 22-24, wherein animal identification device is defined

as “a collar or tag used in the wireless labeling of a subject.” As such, the animal identification device described in Claims 1 and 12 is not an inherent part of a digital computer. This distinction is highlighted by new Claim 20 which contains an additional limitation indicating that the animal identification device is an identification tag or identification collar. The Kennedy patent does not teach or describe an animal identification device as described in Claims 1 and 12, and as such, does not teach each and every element of Claims 1 and 12. The Applicants request these rejections be withdrawn.

II. Rejection of Claims 1-3 Under 35 U.S.C. §103(a)

Claims 1-3 stand rejected under 35 U.S.C. §103(a) as being anticipated by U.S. Patent No. 4,865,044 (hereinafter, “the Wallace patent”). In particular, the Examiner alleges, “Wallace discloses a system comprising an implantable in a cow ear temperature sensing device (transmitter) comprising an identification number generated / processed by an encoder (processor) to be transmitted along with a temperature sensed, a signal receiver comprises a decoder (device receiving a bit rate / digital access device from the transmitter, and an animal identification device (display) (col. 2, lines 35-46). Office Action, page 3. The Applicants respectfully disagree.

The Examiner relies upon the Wallace patent at column 2, lines 35-46 for teaching an animal identification device. Office Action, page 3. However, the Wallace patent within this passage teaches an implantable device that transmits a signal to an appropriate receiver, which displays the signal. Wallace patent, column 2, lines 35-46. As with the Kennedy patent, the Examiner is respectfully directed to the Specification at page 10, lines 22-24, wherein animal identification device is defined as “a collar or tag used in the wireless labeling of a subject.” As such, the animal identification device described in Claims 1 and 12 is not a receiver display. The Wallace patent does not teach or describe an animal identification device as described in Claims 1 and 12, and as such, does not teach each and every element of Claims 1 and 12. The Applicants request these rejections be withdrawn.

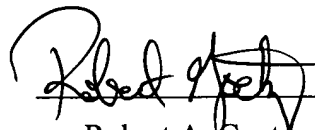
III. Rejections Under 35 U.S.C. §103(a)

The Examiner rejects dependent Claims 5-8, 10, 14-15, and 17 under 35 U.S.C. §103(a). Claims 5-8, 10, 14-15, and 17 are dependent upon non-obvious and non-anticipated Claims 1 and 12. As discussed in Sections I and II of this Office Action Response, the Kennedy and Wallace patents fail to teach all of the required elements within Claims 1 and 12. The other cited references do not remedy this deficiency. As such, a *prima facie* case of obviousness has not been established. The Applicants request these rejections be withdrawn.

CONCLUSION

All grounds of rejection of the Office Action of August 24, 2005, have been addressed and reconsideration of the application is respectfully requested. It is respectfully submitted that Applicant's claims should be passed into allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

Dated: 11/29/2005



Robert A. Goetz
Registration No. 55,210

MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, California 94105
608.218.6900